IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1823 OF 2004

Smt.Kalpana Pradeep Chaurasiya ...Petitioner

vs.

1. Shri A.N.Roy,
   Commissioner of Police
   for Greater Mumbai.
2. State of Maharashtra
3. The Superintendent of Jail,
   Nasik Road Central Prison,
   Nasik. ...Respondents

Shri M.K.Kocharekar for the Petitioner
Shri D.S.Mhaispurkar, A.P.P. for State

CORAM: SMT.RANJANA DESAI &
A.S.OKA,JJ.
DATE : DECEMBER 1, 2004.

ORAL JUDGMENT : **(Per Abhay S. Oka,J.)**

1. The Petitioner is the wife of one Shri Pradeep @ Sheroo Dayaram Chaurasiya. By this Petition under Article 226 of the Constitution of India the Petitioner has taken exception to the order of detention dated 31st March 2004 passed against her husband under Section 3(2) of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders & Dangerous Persons Act, 1981 (hereinafter referred to as the said Act of 1981). The order of detention is based on a case registered against the detenu under the Arms Act and two in-camera statements of witnesses A and B.

2. The learned Counsel for the Petitioner firstly submitted

that there was a gross delay in passing the order of detention as a result of which the live link between the alleged prejudicial activities of the detenu and the order of detention has been snapped. He submitted that the offences allegedly committed by the detenu were in October 2003 and order of detention was passed on 31st March 2004. He submitted that the order of detention has been passed nearly after three months from the date of recording in-camera statements. He submitted that the delay has not been explained by the Respondents and therefore the order of detention is vitiated by gross and unexplained delay.

3. The learned Counsel further submitted that in paragraph No.5 of the order of detention it is reflected that the action taken against the detenu under the normal law of land is found ineffective and inadequate to put a stop to the criminal activities of the detenu. He pointed out that none of the documents which are supplied to the detenu show that preventive action was sought to be taken against the detenu as per the normal law of land. He submitted that the detaining authority has obviously considered the documents/material which are not reflected in the order and copies of which are not supplied to the Petitioner. He, therefore, submitted that there is non-compliance with the mandate under Article 22 of Constitution of India.

4. He lastly submitted that the incidents which are alleged

against the Petitioner in the order of detention do not affect the public order and at highest the said incidents affect the law and order and therefore, the order of detention cannot be passed on the basis of such incidents.

5. The learned A.P.P. Shri Mhaispurkar relied upon the Affidavit-in-reply filed by the Respondent No.1 who is detaining authority and the Affidavit-in-rely of the Sponsoring Authority. He submitted that there is no unreasonable delay in passing the order of detention. In the alternative, he submitted that the delay, if any, has been satisfactorily explained in the Affidavit-in-reply of the detaining authority as well as in the Affidavit-in-reply of the Sponsoring Authority. He submitted that the relevant documents/material which were considered by the detaining authority have been supplied to the detenu. He submitted that the prejudicial activities of the detenu are reflected in the order of detention affect the public order. He submitted that no interference is called for.

6. The order of detention is based on a case registered against the detenu under Sections 3 and 25 of the Arms Act at Nagpada Police Station vide L.A.C.No.3182 of 2003 dated 27th October 2003. A revolver and five live cartridges were recovered from the detenu. The detenu was arrested in connection with the said offence and later on released on bail. The complainant in the said case is one Pandurang

Ananda Pawar. The said Pandurang is working as Police Naik and was attached to Nagpada Police Station. At about 16 hours on 27th October 2003 the said Pandurang received a credible information that the detenu was pointing out a revolver at the members of the public in the areas of M.R.Road, Behram Naka and at that moment the detenue was standing at 12th Lane, Kamathipura. He was informed that due to the activities of the detenu, people in the area were running helter-skelter and shopkeepers started closing down their shops. On the basis of the said information, the Senior Police Officer, P.S.I. Gopale reached Behram Naka. They found that the shops in the locality were partly closed. After making enquiry with the shopkeepers, the Police Officer came to know that the detenu had marched ahead along M.R.Road towards 12th Lane, Kamathipura with a revolver in his hand. When the P.S.I. Gopale and the staff reached 12th Lane, Kamathipura near Samrat Bar, they found that the Petitioner was terrorizing the members of public by pointing out a revolver at them. When the police tried to stop the detenu, he started running away. After chasing the detenu the police caught hold of the detenu and when the search was taken in presence of two Panchas, the detenu was found in possession of a six chambered country made revolver loaded with four live cartridges. Accordingly, the detenu was taken in custody and the said weapon and ammunition was seized under the Panchnama. As stated earlier, the detenu was enlarged on bail in the said case.

7. Witness A in his in-camera statement recorded on 12th January 2004 stated that the detenu was a notorious gangster affiliated to Arun Gawli Gang. He stated that the detenu and his associates extort Hafta money at the point of pistol from the businessmen and shopkeepers in the area of Kumbharwada, Lamington Road, Kamathipura and Mumbai Central. The Witness stated that in the 3rd week of October 2003 at about 5.00 p.m. when he was attending to his customers the detenu and his associate came to his place of business. The associate of the detenu threatened the customers of the witness by showing a chopper and compelled them to run away out of fear. The detenu demanded Rs.10,000/- as Hafta money from the witness. The witness expressed his inability to pay the amount. Therefore, the detenu got enraged and took out a pistol tucked to his waist and rested it on the forehead of the witness and threatened him to kill if Hafta money is not paid. Seeing the said incident passers-by and nearby shopkeepers gathered there. The detenu threatened the said persons also and therefore the said persons ran away helter-skelter and nearby shopkeepers closed down their shops out of fear. Due to the threat given by the detenu and his associates the witness had to pay Rs.5,000/- to the detenu.

8. The Witness B in his in-camera statement recorded on 14th January 2004 also stated that the detenu was a notorious criminal affiliated to Arun Gawli gang and was indulging in extortion of Hafta money in the area of Kumbharwada, Lamington

Road, Kamathipura, Don-Tanki, Mumbai Central and adjoining areas. He stated that the detenu and his associates has unleashed the reign of terror in the minds of residents and shopkeepers in the said area. In the second week of October 2003 at about 11.00 a.m. the said witness stepped out of his residence and went near the motor cycle which was parked near the building. At that time the detenu and his three unknown associates surrounded him and called upon him to pay Rs.15,000/-. The witness started shouting for help. Hearing the shouts the passers-by neighbouring shopkeepers and hawkers gathered there. Therefore, the detenu got aggrieved and took out the pistol hidden in his shirt and rested it on the forehead of the witness. The associates of the detenu took out their choppers and threatened the gathered people. The persons gathered ran away helter-skelter out of fear. Though the witness pleaded to forgive him, the detenu kept on threatening and ultimately extorted sum of Rs.6,000/- from the witness.

9. In so far as the contention raised by the learned Counsel for the Petitioner regarding delay in passing the order of detention is concerned, it is necessary to refer to the Affidavit-in-reply of the detaining authority. It is true that in the two in-camera statements reference is made to the incidents which are of October 2003. The in-camera statements have been recorded on 12th January 2004 and 14th January 2004 respectively. The object of recording in-camera statements is

to record the statements of those persons/complainants who are not willing to come forward and file the complaints due to the terror unleashed by the criminals. Only after assurance is given to such persons that their identity and other material particulars will be kept secret, such persons come forward to give statements. Therefore, though the incidents may be of October 2003, Witnesses A and B came forward to give their statements only after assurance was given to them for keeping their respective identity in secret. This Court as well as the Apex Court repeatedly held that the in-camera statements which are properly verified can be relied upon for passing the order of detention.

10. As stated earlier, the said in-camera statements came into existence on 12th and 14th January 2004. Therefore, in our view what will have to be seen is whether the delay in passing the order of detention from 14th January 2004 is properly explained or not. It is stated in the Affidavit of the detaining authority that two in-camera statements were verified by the Assistant Commissioner of Police on 16th January 2004. It is further stated that considering the prejudicial activities of the detenu, on 30th January 2004 the Sponsoring authority prepared a proposal for taking preventive action against the detenu. After carefully going through the said proposal, Zonal D.C.P. gave his endorsement on 3rd February 2004 and thereafter papers were forwarded to Senior P.I. of P.C.B. C.I.D. After going through the papers, the

Senior P.I. prepared a note and gave his endorsement on 4th February 2004 and forwarded the papers to D.C.P.(P). The said D.C.P.(P) after going through the papers gave his endorsement on 5th February 2004 and forwarded the papers to the Additional C.P.(Crime). The Additional C.P.(Crime) after carefully going through the papers recorded his endorsement on 6th February 2004 and forwarded the papers to the detaining authority. The detaining authority carefully went through the papers and after having subjectively satisfied about the prejudicial activities of the detenu, approved the said proposal and thereafter, draft grounds of detention were formulated on 21st February 2004. Thereafter, the draft grounds of the detention along with other papers were forwarded to P.C.B. C.I.D. for the purpose of fair typing, translation of documents and preparation of necessary sets. The P.C.B. C.I.D. forwarded the papers to the Sponsoring authority as documents were required to be translated in Hindi language which was the language known to the detenu. Thereafter, the Sponsoring authority got the documents translated and after checking the same, obtained the certificate from the A.C.P. of the Division on 16th March 2004 and thereafter the papers were forwarded to P.C.B. C.I.D. on 17th March 2004. The Senior P.I. of P.C.B. C.I.D. after going through the papers gave his endorsement on 26th March 2004 and forwarded the papers to D.C.P.(P) who gave his endorsement on 29th March 2004. The papers were placed before the detaining authority on 31st March 2004 and after

going through the papers, the order of detention was issued on the same day. One Shri Hemant Bawdhankar has filed an Affidavit on behalf of Sponsoring Authority. He has also deposed about the role of Sponsoring Authority after recording of in-camera statements.

11. When the challenge to the order of detention is on the ground of delay in passing the order, the duration of the delay is not of much significance. What is important is whether there is any satisfactory explanation for the delay. The alleged delay is from 14th January 2004 to 31st March 2004. The detaining authority and the Sponsoring authority in the Affidavits-in-reply have given details of the manner in which the proposal for passing the order of preventive detention was scrutinised at different levels. It is explained that some time was required for preparation of translation in Hindi language and checking of the translation. After having perused the Affidavits-in reply and particularly the Affidavit-in-reply of the detaining authority, we are of the view that there is a reasonable explanation for the alleged delay. Apart from the reasonable explanation, we find that looking to the nature of the prejudicial activities and propensity of the detenu, it cannot be said that the live link between the prejudicial activities of the detenu and the order of detention has been snapped.

12. The further contention of the Petitioner is that it is reflected from the order of detention that action taken against the detenu under the normal law of the land is ineffective and inadequate and therefore it is necessary to put a stop to the criminal activities of the detenu. The documents which are supplied to the Petitioner with the grounds of detention did not reflect any such action having been taken against the detenu. In the Affidavit-in-reply of the detaining authority it is stated that considering the prejudicial activities which are carried on by the detenu, and the fact that the witnesses were not ready and willing to file complaint against the detenu he was satisfied that action under the normal law of the land is insufficient to curb the illegal activities. It is further stated that the Sponsoring authority had informed the detaining authority that in the past also the detenu was involved in four offences. However, the detaining authority has stated that while arriving at subjective satisfaction the said four cases were neither referred to nor relied upon by him. It appears to us that the statement made in the order of detention that action against the detenu under the normal law of the land is found ineffective and inadequate is made in the context of the fact that no one was ready and willing to come forward to say anything against the detenu. In such a case effective action against the detenu under the normal law of land is not possible. That is the reason why subjective satisfaction of

the detaining authority was recorded that action under normal law of land is ineffective to put a stop to the prejudicial activities of the detenu. It wouldhave been another matter if it was stated in the order of detention in positive terms that action under the normal law of the land was taken against the detenu and it was ineffective. Therefore, there is no substance in the second grievance of the petitioner.

13. Witnesses A and B in their in-camera statements have narrated that due to threats given by the detenu people in the locality gathered at the place of incidents ran helter-skelter and shop keepers pulled down the shutters of their shops. The witnesses have also stated that in presence of members of public in the locality the detenu used weapon to threaten the witnesses for collecting Hafta money. The activities of the detenu which are narrated in the in-camera statements and the allegation made in the criminal case registered against the detenu show the serious nature of the prejudicial activities of the detenu. In the case which is registered against the detenu, it is alleged that in a very busy locality the detenu was found terrorizing the members of public by pointing out a revolver at them. All these prejudicial activities affect even tempo of the life of the people in locality in which the detenu was carrying on his prejudicial activities. If even tempo of the persons staying in the locality is affected the incidents complained of certainly affect the public order. We are of the view that there is no merit in the last submission

of the learned Counsel for the Petitioner.

14. In the result, the petition fails and the Rule is discharged.

(SMT.RANJANA DESAI,J.)

(ABHAY S. OKA,J.)